STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

       Plaintiff-Appellee,

V

TODD LASSITER,

       Defendant-Appellant.

UNPUBLISHED
March 18, 2003

No. 239236
Wayne Circuit Court
LC No. 00-009468-01

Before: Griffin, P.J., and Neff and Gage, JJ.

PER CURIAM.

Defendant appeals as of right from a conviction of attempted breaking and entering, MCL 750.92; MCL 750.110, for which he was sentenced to three years' probation with the first year in jail. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

A challenge to the sufficiency of the evidence in a bench trial is reviewed de novo on appeal. *People v Sherman-Huffman,* 241 Mich App 264, 265; 615 NW2d 776 (2000), aff'd 466 Mich 39 (2002). This Court reviews the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found that each element of the crime was proved beyond a reasonable doubt. *People v Harmon,* 248 Mich App 522, 524; 640 NW2d 314 (2001). The trial court's factual findings are reviewed for clear error. A finding of fact is considered "clearly erroneous if, after review of the entire record, the appellate court is left with a definite and firm conviction that a mistake has been made." *People v Gistover,* 189 Mich App 44, 46; 472 NW2d 27 (1991).

The elements of breaking and entering are "(1) the defendant broke into a building, (2) the defendant entered the building, and (3) at the time of the breaking and entering, the defendant intended to commit a larceny or felony therein." *People v Adams,* 202 Mich App 385, 390; 509 NW2d 530 (1993). To prove an attempt, the prosecutor must prove that the defendant intended to commit a crime and committed some act going beyond mere preparation in furtherance of that intent. *People v Jones,* 443 Mich 88, 100; 504 NW2d 158 (1993).

The evidence showed that when the store closed for the evening, its damaged back door was locked and blocked by a dumpster and the alarm was set. The alarm went off sometime in the middle of the night and police were dispatched to investigate. They found defendant and another man standing at the back door. The store was not open for business and the men did not have permission to enter. They took off running through the alleys when they saw the police

approach. The evidence further showed that the dumpster had been moved and the lock had been damaged. Such evidence was clearly sufficient to establish that someone had tried to break into the store. The only issue is whether the evidence was sufficient to establish that defendant was the perpetrator.

"The prosecutor is not required to present direct evidence linking the defendant to the crime." Circumstantial evidence and reasonable inferences drawn therefrom are sufficient. *People v Saunders,* 189 Mich App 494, 495-496; 473 NW2d 755 (1991). The investigating officer arrived on the scene within a minute of receiving the dispatch and found two men standing by the damaged back door. He unequivocally identified defendant as one of the men. "Viewed most favorably to the prosecution, this evidence was sufficient to establish defendant's identity beyond a reasonable doubt. The credibility of the identification testimony was a matter for the trial court, as the trier of fact, to decide. We will not resolve it anew." *People v Daniels,* 172 Mich App 374, 378; 431 NW2d 846 (1988). In addition to the identification testimony, there was evidence that defendant attempted to flee the scene, which was evidence of consciousness of guilt. *People v Compeau,* 244 Mich App 595, 598; 625 NW2d 120 (2001). Although defendant denied that he was in the alley and no burglary tools were found on defendant or at the scene, that simply created a question of fact for the trier of fact, and the factfinder, be it the judge or the jury, "may choose to believe or disbelieve any witness or any evidence presented in reaching a verdict." *People v Cummings,* 139 Mich App 286, 293-294; 362 NW2d 252 (1984).

Affirmed.

/s/ Richard Allen Griffin
/s/ Janet T. Neff
/s/ Hilda R. Gage